

**BATTLE CREEK CITY PLANNING COMMISSION  
MEETING MINUTES  
Wednesday, January 23, 2008**

**1. Call to Order:**

Chairman Troutman called the meeting to order at 4:00 p.m.

**2. Attendance:**

**Members Present:**

|              |                |                |
|--------------|----------------|----------------|
| Steve Barker | Preston Hicks  | Carlyle Sims   |
| Mark Behnke  | William Morris | Ed Scheinfeldt |
| Jan Burland  | Chris Simmons  | Mike Troutman  |

**Staff Present:** Michael Buckley, Director, Planning and Community Development  
Glenn Perian, Senior Planner, Planning Dept.  
Leona Parrish, Administrative Assistant, Planning Dept.

**3. Additions or Deletions to the Agenda: None**

**4. Approval of Minutes: Meeting Minutes of December 19, 2007.**

**A MOTION WAS MADE BY COMMISSIONER SIMS, SUPPORTED BY  
COMMISSIONER SCHEINFELDT TO APPROVE THE MINUTES OF DECEMBER  
19, 2007 AS PRESENTED. VOTE ON MOTION: ALL YES, NONE OPPOSED  
MOTION CARRIED.**

**5. Correspondence: Letter received from Ms. Gloria Drackett in opposition to Special Use Permit Application #S-01-08 regarding 950 Iroquois Ave.**

**6. Public Hearing:**

**A. Special Use Permit (#S-01-08):**

**Petition from Paul & Joyce Lajoie, 20653 N. Bedford Rd, Battle Creek, Michigan, for a Special Use Permit of the following described property for use as a parking lot as permitted under the Planning and Zoning Code, Chapter 1290 Section 1290.01(b)(13), for property located at 950 Iroquois Avenue, Parcel # 6970-13-907-0, and legally described as: PRAIRIEVIEW GARDENS LOT #7.**

Ms. Joyce Lajoie, owner of Weezer's Grill spoke, stating they had owned this property for four years, and decided six months ago to purchase 950 Iroquois Ave. for parking. They discovered they needed a Special Use Permit. If they do not get this approved, they will not have parking for their business or sixteen employees.

Commissioner Troutman asked Ms. Lajoie if they had read the report from the Planning Department and their recommendations.

Ms. Lajoie stated she had seen the report and does not have any objections. She did not attend the Neighborhood Planning Council meeting as she went to the wrong location noted on the paper she had received and that she will be attending another meeting in the future.

Commissioner Burland asked Ms. Lajoie if she had seen the letter from Ms. Gloria Drackett and her concern with the possibility of demolishing the home at 950 Iroquois and making it into a parking lot.

Ms. Lajoie stated the parking spaces are existing spaces and they will not be tearing down the rental house at that location, but would keep it as a rental house. Ms. Lajoie said that the parking has been there for eight years, and they would be putting a 7 ft. privacy fence long the residential property line using chain link or wood slat fence whichever the neighbor prefers.

Commissioner Morris asked owner if it would be a problem if they planted trees for a noise buffer.

Ms. Lajoie stated there might be some room but they needed room for the fence and steel rods, so when snow is pushed up, there will be enough room.

Commissioner Troutman asked if anyone was present to speak in opposition:

Mr. Chris Dembski, 942 Iroquois Ave. came forward to speak in opposition. He said that his first impression was that the house was to be torn down and used as parking lot. He had received several neighbor signatures against this and then spoke with someone with the city and discovered they were not tearing down the house.

Mr. Dembski noted that his back yard backs up to the parking lot and noted several issues in the past years that they have had with this parking lot, they are as follows:

1. Property damage, snow from the parking lot plowed up against the fence causing it to lean.
2. Fence post bent down by one of Weezer's customers; when this happened their children were present playing in back yard.
3. Concerned with the safety of their children playing in back yard.
4. Customer behavior; women being beaten by boyfriend, sex acts being performed, drunken behavior, and profanity, etc.
5. Litter being thrown into their yard.
6. Chicken bones and such being thrown over into the yard to their dog.
7. Outdoor parties in rear, loud music until 2:00 am.
8. Bike Nights with motorcycles when children need to go to school.
9. Driveway being blocked.
10. Police officer called at 10:00 p.m., they asked the owner to turn down music, after he left they turned back up.

Commissioner Bill Morris asked Mr. Dembski how long had they lived at 942 Iroquois.

Mr. Dembski stated since 1996.

Commissioner Preston Hicks asked Mr. Dembski what type of fence separated their properties.

Mr. Dembski stated it was a chain link fence.

Commissioner Hicks asked if a different type of fence would be better.

Mr. Dembski stated a different fence would block the view but would not stop the litter and noise.

Commissioner Hicks asked if the neighbors had spoken to the owners regarding these issues.

Mr. Dembski stated they had been discussed for several years and asked for a privacy fence, but had been ignored until now.

Commissioner Simmons stated that besides being a Planning Commissioner he is also the Ward Commissioner for the City Commission and this is in his Ward. He is concerned with everyone living in peace and harmony and respects the property rights for both sides. He would like to see a solution that would be equitable for both sides. He wondered if the last couple of parking spaces could be used to create a buffer zone, with fence set away to create a buffer zone.

Mr. Dembski stated they had suggested a guardrail or something similar. He noted that after the incident with the fence being bent down and straightened the owner did move some concrete slabs to the end of the parking lot so they would help stop the cars tires.

Commissioner Morris asked if a 7 ft. or 8 ft. fence with guardrails and shrubs being 8 ft. away would be best for protection of children in the yard.

Mr. Dembski stated he would be in agreement with this as long as there was some type of safety in place between their properties.

Commissioner Jan Burland asked Mr. Buckley who owned the parking lot to the south of Weezer's.

Mr. Buckley stated it belonged to Dr. Kasten and the parking south of Iroquois belongs to the bank.

Commissioner Burland asked that in receiving this new information, they might want to give the applicant another opportunity to resubmit a revised plan.

Mr. Buckley stated it was up to the Planning Commission, that he was not sure if there was a time limit in regards to the purchasing of the property.

Commissioner Scheinfeldt stated he was confused with the map relating it to stipulation #2 where it talked about the North 66 feet with reference to lot #7.

Mr. Buckley noted that Lot # 7 includes the rental property at 950 Iroquois. The property he was intending to describe is that area on their site plan as actually being the parking lot.

Mr. Buckley stated that an R-1B District has to have 7,500 sq. ft. according to the ordinance. If they split this lot into two areas, one parking and the other residential, neither one would be a legally sized lot according to the ordinance.

Mr. Buckley stated they cannot be two separate parcels. It would be the decision of the Zoning Board of Appeals to approve a variance to the ordinance. He noted that if it were approved with condition #4 in the report, it would resolve the issue.

Commissioner Morris asked Mr. Dembski if he would be in support if they were to approve # 4 and agree to take some of the parking space (8 or 10 feet) and put up a fence, plant shrubs or trees for a buffer, and place a guardrail to stop cars.

Mr. Dembski stated, yes with the barriers it would be acceptable.

Commissioner Simmons asked Ms. Lajoie if she was agreeable to do what had been discussed regarding moving some parking, installing a fence and creating a buffer.

Ms. Lajoie stated they would like to work with the neighbors. She would agree to a fence, guardrails and bushes as a buffer to make everyone happy. She noted they only have two outdoor events a year.

Mr. Phil Hornberger, Stricklin Rd., Berry County, stated he is a financial advisor for Ms. Lajoie. He asked if it would be possible to tear down the house and use for parking.

Commissioner Troutman stated that would not be a decision for the Planning Commission; that it would need to be presented to the Zoning Board of Appeals for a use variance.

Having no further questions Commissioner Troutman closed the public hearing.

**B. Special Use Permit (#S-02-08): Petition from Joel E. Fulton, 28 W. Bidwell St., Battle Creek, MI, for a Special Use Permit of the following described property for use as a Tattoo Parlor as permitted under the Planning and Zoning Code, Chapter 1290 Section 1290.01(b) (28), for property located at 529 Capital Ave., S.W., Parcel # 6580-00-013-0, legally described as: PHELPS ADD LOT 13.**

Mr. James Roberts, 1108 W. Goguc Street was present to speak, stated he would be opening the business and renting this location from Mr. Joel Fulton. He said that he would like to have the tattoo shop classier than what most people think a tattoo shop is like and raise the standard.

Commissioner Troutman asked if he had read the staff recommendations.

Mr. Roberts was provided with a copy, and Commissioner Troutman asked him about the parking.

Mr. Roberts stated he did not intend to have more than two to three clients, as it would be done by appointment.

Commissioner Sims asked if he planned on using the two story house in front which is a real-estate office.

Mr. Roberts stated he intended to use the lower story.

Commissioner Sims noted that it would need to be barrier free and include a ramp to be made accessible for wheelchairs. Mr. Roberts stated yes, he is aware of building a ramp on the front step.

Commissioner Troutman stated that a part of the staff recommendations is that they meet all the building code and health department requirements.

Commissioner Burland asked about what type of activities would be occurring in this tattoo parlor. She understands that a tattoo parlor can include body piercing and branding, she wanted to have it noted if they were to be included and noted for the record. She asked if piercing and branding is included in his business.

Mr. Roberts stated he has no interest in doing the branding. He said State Law is confusing and what he understands is that for branding you would need to have a special ventilation system. He has no interest in branding or paying \$10,000 dollars for installing a ventilation system. Regarding piercing, he does not have much of an interest in doing, as there is no profitability.

Commissioner Barker referred to the parking situation and asked Mr. Buckley if parking in the front yard was prohibited in the city.

Mr. Buckley stated, yes it is prohibited. Commissioner Barker stated the report noted he would need at least three parking spaces.

Mr. Roberts stated he was aware of that and Mr. Fulton said he would share the parking lot if needed.

Mr. Buckley stated they would need 2 parking spaces per chair and 1 space per employee, and would need a copy of the parking agreement showing that it existed. It would be best if we had the copy to forward with the Planning Commission recommendation to the City Commission.

Commissioner Barker asked Mr. Roberts if he had planned any renovations for the building. Mr. Roberts stated it is very minimal, that he would need to have one piece of linoleum and fresh paint.

Commissioner Barker asked if anyone would be residing in the building. Mr. Roberts states he will be renting only the lower level and he understands that upstairs will be used for storage.

Mayor Behnke asked about the signage, and what it would look like. Mr. Roberts stated there is currently a Meisterheim sign there. He intends to remove it and turn it so it faces forward, and it would be the same size, with an "open" sign to be added.

Mr. Buckley stated that in December 2007 the State passed Act 149 of 2007, and beginning next January all body art facilities would need to be licensed by the State of Michigan and inspected by the County.

Mr. Roberts stated he was aware of this new requirement.

No one else spoke for or against this issue and the Public Hearing was closed.

- C. Special Use Permit (#S-03-08): Petition from Gerald J. Askler, 1483 W. Michigan, Battle Creek, Michigan for a Special Use Permit of the following described property for use as a Calvary Christian Fellowship Church as permitted under the Planning and Zoning Code, Chapter 1290, Section 1290.01(b)(23), for property located at 4251 W. Columbia Ave., Parcel # 0070-00-270-0, and legally described as: BC TWP SEC 20 T2S R8W COMM 1542 FT N OF W 1/4 POST AT CENTER LINE OF COLUMBIA AVE - N 40 DEG 8 MIN E 213.90 FT TO TRUE POB - N 40 DEG 8 MIN E 370 FT - S 49 DEG 52 MIN E 368 FT - S 40 DEG 8 MIN W 370 FT - N 49 DEG 52 MIN W 368 FT TO POB.**

Mr. Rick Gorham, 1905 Hickory Ridge, Galesburg Michigan and Mr. Jim Westra, 14 Mile Rd., Battle Creek, Michigan was present to speak in favor of this petition. Stated they had driven by the property located at 4251 W. Columbia Avenue and thought it would be a good location for their church with good access to I-94, and would like to locate their church there as they are presently meeting at a hotel.

Commissioner Troutman asked if they had an opportunity to review the staff report and recommendations.

Mr. Gorham stated, yes they had and do not have any questions.

Mayor Behnke asked if they had looked further into the Battle Creek area for any other possible locations.

Mr. Gorham said they have been looking for what they can afford with about 5,000 sq. ft. with good access. States they have persons come from Kalamazoo, Marshall, Vicksburg and the surrounding area, and wanted to find a location that would be accessible to everyone.

Mr. Gorham stated that the prior use was for the motor home sales and that the inside was just a rectangular open area with some rooms on the sides. Their plan would be to wall off the sanctuary and create the church area at their expense.

Commissioner Burland said that she thought the airport flight air path is near or over this area.

Mr. Mike Buckley stated we do have a clear zone designated in the ordinance, which does not go down that far.

Mr. Buckley stated regarding the RILUPA "Religious Land Use Institutionalized Persons Act", the Commission needs to look at it in terms of if you allow by right a number of other uses that include the congregation assembly of persons, the fact that it is a church, should not be looked at any differently than you would any other use that can go there.

Commissioner Morris stated that it does meet the criteria that we have, unless there is a reason we should not allow it. Mr. Buckley stated he thinks it does meet the criteria because it is a "C-3 Intensive Business Zone". If it were a residential and or agricultural zone, they might be able to make the argument that it would not fit because of the underlying zone.

Commissioner Troutman asked about the normal activities of the church, how often would it be used. Mr. Gorham stated they would hold a mid-week service and Sunday Service, which would be 2 hours on Tuesday instead of Wednesdays because they both work and will be co-pastors for the church.

Mr. Buckley stated that he did check with the City Assessor and noted that for tax purposes, if the property is owned by a private individual and leased to a tax exempt institution they would be assessed property taxes.

Commissioner Barker asked regarding the equal protection issue for churches, is it the same as any thing else permitted under that zoning. Stated he thinks it is the same as the church on the corner of Helmer and Watkins Rd. that it could have an adverse affect on some of the other commercial development nearby with regard to hotels, liquor licenses, etc. He would not want to allow a Special

Use Permit that would have an adverse effect on any potential commercial development in that immediate area.

Commissioner Morris asked if they had presented it to the Neighborhood Planning Council and if so, what was their recommendation. Mr. Gorham stated the NPC had suggested they get their money back as they were not prepared and to get counsel from Mr. Buckley. They had felt discouraged and contacted the Planning Department and spoken to Glenn Perian and were encouraged that there was hope for this approval. The NPC told them it would be denied and that they were not prepared to go forward with the petition. Mr. Westra referred to the letter attached to the staff report, and contacted the Planning Department and was told they were proceeding in the right direction.

Commissioner Troutman asked if there was anyone else present wishing to speak:

Ms. Linda Morris, 4025 S. Minges Rd, Battle Creek, Michigan came forward to speak and noted she is an attorney and also a member of the Rural Southwest Neighborhood Planning Council. She said that the attached letter to the staff report should not have been made part of the packet as it concerns another issue they have with the Planning Department. She said that she was there to speak on behalf of the Neighborhood Planning Council and also share her personal position regarding this petition.

Ms. Morris states NPC # 9 was not able to make a decision because they needed additional information. She said that the Neighborhood Planning Council is not taking a position and feel the Commission needs more information. She said that personally she does not care one way or the other.

Commissioner Morris asked Mr. Buckley regarding the Airport Overlay Zone. Mr. Buckley stated the creation of an airport overlay zone is where they will limit some development around the airport. He stated the first step was the airport getting a Part 150 Noise Study done, which requires they get the noise contour for aircraft types.

Commissioner Burland stated they do not have the noise contours for the JCA's but rather for the F-15 which is a little noisier. She stated that there are many possibilities for missions in the future for Kellogg Field, Air National Guard Base or possibly an Army Guard mission or Navy mission and that those possibilities are wide open.

Commissioner Burland said that there is a mission for a certain aircraft, but you cannot eliminate the possibility of any aircraft wanting to land here.

Commissioner Simmons stated he cannot fault the petitioners for not knowing the process for requesting the Special Use Permit, and recommends that the Planning Department provide more guidance. He asked about the correspondence from Binger Shipping Supplies, and their concern of the use of this property if approved would lower their property value. He asked if there was any evidence that churches would lower property values, and if there is any merit in their argument.

Mayor Behnke thinks that the Binger's argument is that their piece of property has been associated with the Ewing property and have been more marketable with that association and without having the need for their property, their property value may decrease somewhat, unless the church plans on growing and using the property for parking someday.

Commissioner Barker stated at this time he would not be in support and that the use is not harmonious with the existing zoning code for that area. He feels it would have an adverse effect that the entity has on other businesses that are adjacent in the area. He noted that the airport issues are also a concern.

Commissioner Simmons said regarding Mr. Binger, he understands for investment purposes that in the future someone might take the property in question and join with theirs and by allowing this Special Use Permit it could discourage their plans

With no one else wishing to speak the Public Hearing was closed.

**7. Old Business: None**

**8. New Business:**

**A. Special Use Permit (#S-01-08):**

**Petition from Paul & Joyce Lajoie, 20653 N. Bedford Rd, Battle Creek, Michigan, for a Special Use Permit of the following described property for use as a parking lot as permitted under the Planning and Zoning Code, Chapter 1290 Section 1290.01(b)(13), for property located at 950 Iroquois Avenue, Parcel # 6970-13-907-0.**

**A MOTION WAS MADE BY COMMISSIONER SIMS, SUPPORTED BY COMMISSIONER MORRIS TO APPROVE WITH THE RECOMMENDATIONS OF A PRIVACY FENCE, GUARDRAIL (3 OR 4 FT. FROM FENCE), PLANTINGS ALONG THE PROPERTY LINE IN ADDITION THAT ANY LIGHTING BE DIRECTED AWAY FROM RESIDENTIAL PROPERTY, INCLUDING RECOMMENDATIONS MADE IN THE STAFF REPORT.**

**Discussion:**

Mayor Behnke wanted to thank everyone for being able to reach an agreement between the owner, and neighborhood. He said that sometimes it can be difficult and that the Dembski's were very willing to participate and encouraging the business to grow, while at the same time the owner is willing to spend considerable money in doing a barrier, shrubs and railing. He thanked them very much.

Commissioner Scheinfeldt commented regarding the fencing and that they would need to be in compliance with the city ordinance. Mr. Glenn Perian stated the ordinance states that the fence cannot be less than 5 ft. and not more than 8 ft. in height.

**A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.**

**B. Special Use Permit (#S-02-08): Petition from Joel E. Fulton, 28 W. Bidwell St., Battle Creek, MI, for a Special Use Permit of the following described property for use as a Tattoo Parlor as permitted under the Planning and Zoning Code, Chapter 1290 Section 1290.01(b)(28), for property located at 529 Capital Ave., S.W., Parcel # 6580-00-013-0.**

**A MOTION WAS MADE BY COMMISSIONER BURLAND, SUPPORTED BY COMMISSIONER MORRIS TO APPROVE WITH THE CONDITIONS AS RECOMMENDED BY THE PLANNING DEPARTMENT STAFF REPORT,**



**INCLUDING OTHER ACTIVITIES THAT COULD TAKE PLACE AT A TATTOO PARLOR, BUT HAVE NOT BEEN LISTED.**

Discussion: None

**A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.**

- C. Special Use Permit (#S-03-08): Petition from Gerald J. Askler, 1483 W. Michigan, Battle Creek, Michigan for a Special Use Permit of the following described property for use as a Calvary Christian Fellowship Church as permitted under the Planning and Zoning Code, Chapter 1290, Section 1290.01(b)(23), for property located at 4251 W. Columbia Ave., Parcel # 0070-00-270-0.**

**A MOTION WAS MADE BY COMMISSIONER SCHEINFELDT, SUPPORTED BY COMMISSIONER SIMMONS TO APPROVE WITH THE STAFF RECOMMENDATIONS.**

Discussion:

Commissioner Sims asked if the church had a time schedule. Mr. Rick Gorham stated three months.

Mayor Behnke wanted to make sure everyone is aware that he knows the Asklers and the Bingers.

Commissioner Burland stated she would be voting in opposition as she does not believe it satisfies beyond a reasonable doubt the basis for determination, including A., B., D., & F. Specifically with (A) she is concerned about people congregating on weekends with the fact that it puts at risk future missions for the Air National Guard and the Army Reserve and National Guard. Referenced the map in the packet, as the Army National Guard property is directly across the street, which have arms training during the weekends. According to the objectives of the Master Plan it does put both of these operations at risk of encroachment. Regarding (B) it would be a substantial change in the character of the area, buy way of virtue of the way this business will be operated, being adjacent to Fort Custer and proximity to Fort Custer expansion area. Also, the Kellogg Airport which are places of business that employ more than 10,000 people on three shifts are 24 hours a day with intense commercial traffic that already overburdens the existing infrastructure. Item (D) considers this a substantial improvement to the property if it generated additional tax base and job creation, which she expects it would not do. Item (F) this does differ from the other permitted uses because of its nonprofit status.

Mayor Behnke thanked Commissioner Burland for her work, and in making their job easier. He wanted to make sure the petitioners understand that as Planning Commissioners and City Commissioners they follow these guidelines and be convinced that what they are doing is correct. As Mayor of this community he would like to help them find the right piece of property. He is not convinced that the former Ewing property is the right location for their organization and he would not be supporting the special use permit.

**A ROLL CALL VOTE WAS TAKEN: THREE(3) SIMMONS, SCHEINFELDT AND TROUTMAN IN FAVOR; SIX (6) BARKER, BEHNKE, BURLAND, HICKS, MORRIS, AND SIMS OPPOSED. MOTION DENIED.**

Mr. Jim Westra thanked the Planning Commission, said they understand exactly what was said. He suggested that if they had reviewed the staff report first they would not have gone forward with the petition.

**9. Comments by the Public:**

Ms. Linda Morris asked regarding the cost of the petitions being \$600 dollars. Mr. Buckley stated it had increased about 3 years ago because of the cost of publications and mailing.

**10. Comments by the Staff and Commission Members:**

Commissioner Sims stated this was the second time he had to vote, when the study for the Airport Overlay would have been of help. He asked if Mr. Buckley would see where we are at with the update.

Mr. Buckley stated they could provide this information along with additional updates at the next meeting.

Commissioner Scheinfeldt stated he and Mr. Buckley had discussed other items, and that Mr. Buckley will be providing updates regarding the Transitional Business District, Form Base Zoning, and the Capital Improvement Plan/Process. He said that he did attend the City Commission meeting and they agreed to defer a vote two weeks ago, in order to hold a workshop for discussion. He attended the workshop and heard that the city administration will be looking at the process as well as tweaking some of the priorities of individual projects. He stated that he is willing to volunteer to help with the process.

Commissioner Barker wanted to thank Mr. Buckley for the extra reading material this month. He had read the Proactive Planning Report that was provided this month, and was interested in that it had provided a lot of activities they could engage in.

**11. Adjournment:**

The meeting adjourned at 5:47 P.M.

Respectfully Submitted,

Michael J. Buckley, Executive Secretary  
Battle Creek City Planning Commission

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